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9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF WASHINGTON

11 In Re:

Case No. 17-02025-9

12 Kennewick Public Hospital District,
 13 Debtor.

DEBTOR'S MOTION FOR ENTRY
 OF ORDER CONFIRMING
 PROTECTIONS OF SECTIONS
 362, 365, AND 922 OF
 BANKRUPTCY CODE

15 Kennewick Public Hospital District, a Washington public hospital district
 16 (d/b/a Trios Health) (the "District" or "Trios") and the debtor in the above-
 17 captioned case (the "Chapter 9 Case") files this motion (the "Motion") pursuant to
 18 section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as
 19 amended, the "Bankruptcy Code") for entry of an order (the "Order") substantially
 20 in the form attached to this Motion as Exhibit A confirming the application of
 21 (a) the automatic stay provisions of sections 362 and 922 of the Bankruptcy Code
 22 (together, the "Chapter 9 Stay") and (b) the anti-termination and anti-modification

MOTION FOR ENTRY OF ORDER
 CONFIRMING PROTECTIONS OF
 SECTIONS 362, 365, AND 922 OF
 BANKRUPTCY CODE - 1

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1 provisions of section 365 of the Bankruptcy Code (together, the “Contract
2 Protections”). In support of this Motion, the District submits the
3 contemporaneously filed Declaration of Craig Cudworth in Support of First Day
4 Pleadings (the “Cudworth Declaration”).¹ In further support of this Motion, the
5 District respectfully states as follows:

6 **I. JURISDICTION**

7 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
8 1334. This matter is a core proceeding within the meaning of 28 U.S.C.
9 § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408
10 and 1409. The statutory basis for the relief requested herein is section 105(a) of
11 the Bankruptcy Code.

12 **II. BACKGROUND**

13 On June 30, 2017 (the “Petition Date”), the District filed a voluntary petition
14 for relief under chapter 9 of the Bankruptcy Code. No statutory committee of
15 unsecured creditors has been appointed in this Chapter 9 Case.

16 Additional information regarding the District’s businesses, assets, capital
17 structure, and the circumstances leading to the filing of this Chapter 9 Case is set
18 forth in the Cudworth Declaration.

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¹ Capitalized terms used but not otherwise defined in this Motion have the same
22 meanings as ascribed in the Cudworth Declaration.

III. RELIEF REQUESTED

By this Motion, the District respectfully requests entry of the Order, pursuant to section 105(a) of the Bankruptcy Code, confirming the application of two key protections afforded to the District under the Bankruptcy Code: specifically, the Chapter 9 Stay and the Contract Protections. The District seeks this relief to: (a) aid in the administration of the Chapter 9 Case; (b) protect and preserve its property for the benefit of its patients, creditors, and other stakeholders; and (c) ensure that the District is afforded the breathing space it needs to focus on developing and negotiating a plan for adjusting its debts.

IV. BASIS FOR RELIEF

A. The Chapter 9 Stay and the Contract Protections

Upon the commencement of a bankruptcy case, section 362 of the Bankruptcy Code provides for a stay of certain actions by non-debtor third parties. Subject to certain enumerated exceptions, section 362 provides as follows:

[A] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

1 (2) the enforcement, against the debtor or against
2 property of the estate,² of a judgment obtained before the
3 commencement of the case under this title;

4 (3) any act to obtain possession of property of the estate
5 or of property from the estate or to exercise control over
6 property of the estate;

7 (4) any act to create, perfect, or enforce any lien against
8 property of the estate;

9 (5) any act to create, perfect, or enforce against property
10 of the debtor any lien to the extent that such lien secures
11 a claim that arose before the commencement of the case
12 under this title;

13 (6) any act to collect, assess, or recover a claim against
14 the debtor that arose before the commencement of the
15 case under this title;

16 (7) the setoff of any debt owing to the debtor that arose
17 before the commencement of the case under this title
18 against any claim against the debtor; and

19 (8) the commencement or continuation of a proceeding
20 before the United States Tax Court concerning a tax
21 liability of a debtor that is a corporation for a taxable
22 period the bankruptcy court may determine or concerning
the tax liability of a debtor who is an individual for a
taxable period ending before the date of the order for
relief under this title.

² In chapter 9, “property of the estate” refers to property of the debtor. *See* 11
U.S.C. § 902(1) (“‘property of the estate,’ when used in a section that is made
applicable in a case under [chapter 9] by section 103(e) or 901 of this title, means
property of the debtor”).

1 11 U.S.C. § 362(a). This “automatic stay” is made applicable in a case under
2 chapter 9 by section 901 of the Bankruptcy Code. *See* 11 U.S.C. § 901(a)
3 (providing that section 362 of the Bankruptcy Code, among other provisions,
4 applies in a case under chapter 9).

5 As the term “automatic stay” implies, the injunction contained in section 362
6 of the Bankruptcy Code is self-executing. This automatic statutory injunction
7 constitutes a fundamental debtor protection that—in combination with other
8 provisions of the Bankruptcy Code—provides a “breathing spell” essential to
9 (a) the preservation of the debtor’s property and (b) the debtor’s ability to
10 administer its bankruptcy case and pursue restructuring efforts without undue
11 distraction or interference. *See, e.g., Sherman v. Sec. & Exch. Comm’n (In re*
12 *Sherman)*, 491 F.3d 948, 971 (9th Cir. 2007) (explaining that “one of the purposes
13 of the automatic stay is to give a debtor a ‘breathing spell from his creditors’
14 during which the debtor can ‘attempt a repayment . . . plan, or simply . . . be
15 relieved of the financial pressures that drove him into bankruptcy.’”) (quoting H.R.
16 Rep. No. 95-595, at 340 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-97).

17 The automatic stay is supplemented in chapter 9 by section 922(a) of the
18 Bankruptcy Code, which provides as follows:

19 A petition filed under this chapter operates as a stay, in
20 addition to the stay provided by section 362 of this title,
applicable to all entities, of—

21 (1) the commencement or continuation, including the
22 issuance or employment of process, of a judicial,
administrative, or other action or proceeding against an

1 officer or inhabitant of the debtor that seeks to enforce a
2 claim against the debtor; and

3 (2) the enforcement of a lien on or arising out of taxes or
4 assessments owed to the debtor.

5 11 U.S.C. § 922(a). In a chapter 9 case, therefore, section 922 of the Bankruptcy
6 Code extends the self-executing protections of section 362 of the Bankruptcy Code
7 to, among other things, actions against officers and inhabitants of the debtor to
8 enforce claims against the debtor.

9 Section 365 of the Bankruptcy Code also is made applicable in chapter 9
10 pursuant to section 901(a) of the Bankruptcy Code. *See* 11 U.S.C. § 901(a)
11 (specifically listing section 365 as applicable in chapter 9). Among other things,
12 section 365 of the Bankruptcy Code prohibits all counterparties to executory
13 contracts or unexpired leases with a debtor from modifying or terminating such
14 contract or lease, or any right or obligation under such contract or lease, at any
15 time after the commencement of the case, “solely because of a provision in such
16 contract or lease that is conditioned on, [among other things,] (a) the insolvency or
17 financial condition of the debtor at any time before the closing of the case, [or]
18 (b) the commencement of a case under [the Bankruptcy Code.]” 11 U.S.C.
19 § 365(e)(1).

20 The Contract Protections in section 365 also are self-executing and work
21 hand-in-hand with the Chapter 9 Stay to protect the debtor’s valuable property
22 interests. To that end, the Chapter 9 Stay and the Contract Protections extend to
protect a chapter 9 debtor’s property and contracts wherever located and by

1 whomever held. *Cf. Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*,
2 153 F.3d 991, 996 (9th Cir. 1998) (bankruptcy court may protect estate property
3 wherever located by issuing a discharge injunction under section 524 of the
4 Bankruptcy Code).

5 Consistent with the foregoing, absent court approval, any actions by third
6 parties to modify or terminate contracts or enforce their terms against the District
7 are prohibited as an interference with property of the debtor. *See NLRB v. Bildisco*
8 *& Bildisco*, 465 U.S. 513, 532 (1984) (holding that while the debtor may enforce
9 the terms of the contract against the creditor, the creditor is “precluded from . . .
10 enforcing the contract terms” of an executory contract prior to assumption by the
11 debtor).

12 Thus, the non-debtor counterparty to an executory contract or unexpired
13 lease must continue to perform until it is assumed or rejected. *See Krafsur v. UOP*
14 *(In re El Paso Refinery, L.P.)*, 196 B.R. 58, 72 (Bankr. W.D. Tex. 1996) (“[T]he
15 [Bankruptcy] Code places an independent duty on the non-debtor to continue the
16 performance of an executory contract until it is assumed or rejected. . . . Whether
17 the debtor performs or not, the non-debtor must perform until assumption or
18 rejection.”); *see also Interstate Gas Supply, Inc. v. Wheeling Pittsburgh Steel Corp.*
19 *(In re Pittsburgh-Canfield Corp.)*, 283 B.R. 231, 238 (Bankr. N.D. Ohio 2002)
20 (“Until an executory contract has been rejected, generally a non-debtor must
21 continue to perform It follows that the non-debtor party cannot unilaterally
22

1 elect to cease performance on an executory contract prior to its assumption or
2 rejection.”) (quotation marks and citation omitted).

3 **B. Request to Confirm the Existence and Effect of the Chapter 9 Stay and**
4 **the Contract Protections**

5 Section 105(a) of the Bankruptcy Code authorizes the Court to “issue any
6 order, process, or judgment that is necessary or appropriate to carry out the
7 provisions of this title.” 11 U.S.C. § 105(a). Pursuant to section 105(a) of the
8 Bankruptcy Code, the District requests an order confirming the existence and effect
9 of the Chapter 9 Stay and the Contract Protections.

10 Notwithstanding the self-executing and global nature of the Chapter 9 Stay
11 and the Contract Protections, not all parties affected or potentially affected by the
12 commencement of this Chapter 9 Case are aware of these provisions of the
13 Bankruptcy Code. Even parties that generally are aware of the automatic stay and
14 contract provisions of the Bankruptcy Code may not appreciate their full
15 significance and impact or how these provisions apply in chapter 9. Historically,
16 chapter 9 has been a little-used chapter of the Bankruptcy Code, particularly when
17 compared to chapters 7 and 11. Even creditors with experience in other bankruptcy
18 matters may have little familiarity with chapter 9 and how (or if) the Chapter 9
19 Stay and Contract Protections apply in chapter 9.

20 Therefore, for the District to obtain the full benefit of the “breathing spell”
21 afforded by bankruptcy, the District believes that it is necessary and appropriate to
22 advise third parties of the existence and effect of the Chapter 9 Stay and Contract

1 Protections through a separate court order. Such an order can be transmitted to
2 affected parties to demonstrate the existence of the Chapter 9 Stay and the Contract
3 Protections and their applicability in chapter 9. The District submits that this will
4 promote prompt compliance with the Chapter 9 Stay and the Contract Protections,
5 maximize the protections afforded by these provisions, and minimize the need for
6 future court intervention to address these issues.

7 For these reasons, it is not uncommon at the outset of a bankruptcy case for
8 the court to issue an order embodying and restating the provisions of sections 362,
9 365 and (in a chapter 9 case) 922 of the Bankruptcy Code. *See, e.g., In re N.Y.C.*
10 *Off-Track Betting Corp.*, No. 09-17121 (Bankr. S.D.N.Y. Dec. 9, 2009) (order
11 confirming the existence and effect of the Chapter 9 Stay and Contract Protections
12 in a chapter 9 case); *In re Almatix B.V.*, No. 10-12308 (Bankr. S.D.N.Y. May 17,
13 2010) (same, in a chapter 11 case); *In re PLVTZ, Inc.*, No. 07-13532 (Bankr.
14 S.D.N.Y. Nov. 9, 2007) (same, in a chapter 11 case).

15 As part of this relief, the District requests that the Court expressly confirm
16 the application of the Chapter 9 Stay to any action or proceeding against any
17 officers of the District (any such individual, a “District Officer”). As noted above,
18 section 922(a)(1) of the Bankruptcy Code stays actions against District Officers or
19 inhabitants of the District that seek to enforce a claim against the District. Section
20 922(a)(1) of the Bankruptcy Code was enacted, in part, to prohibit creditors from
21 bringing or continuing mandamus or other actions against officers of a
22 municipality in an effort to collect prepetition debts. 6 COLLIER ON BANKRUPTCY

¶ 922.02[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.). Section 922 of the Bankruptcy Code makes clear that the Chapter 9 Stay applies to actions and proceedings against officers of a municipal debtor, without regard to the capacity in which the officer is serving. *See* 11 U.S.C. § 922(a) (providing in part that “[a] petition filed under [chapter 9] operates as a stay . . . of (1) the commencement or continuation . . . of a judicial, administrative or other action or proceeding against an officer . . . of the debtor”).

Notwithstanding the clear mandate of section 922 of the Bankruptcy Code, the District anticipates that creditors or other parties in interest may attempt to circumvent the protections of the Chapter 9 Stay by asserting claims against District Officers acting in other capacities. Accordingly, to effectuate the intent of section 922 of the Bankruptcy Code and minimize interference with the District’s efforts to restructure its finances, the District requests that the Court’s Order confirming the existence and effect of the Chapter 9 Stay expressly confirm the application of the Chapter 9 Stay to the District Officers in whatever capacity they may serve.

V. NOTICE

Contemporaneously with the filing of this Motion, the District has filed a motion (the “Initial Hearing Motion”) requesting entry of an order (a) shortening time to object, (b) scheduling hearing regarding the District’s initial motions, including this Motion, and (c) limiting notice thereof. Following entry of the

1 Court's order on the Initial Hearing Motion, and as directed by that order, the
2 District will serve a notice and copy of this Motion.

3 **VI. NO PREVIOUS REQUEST**

4 No prior motion for the relief requested herein has been made by the District
5 to this or any other court.

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WHEREFORE, for the reasons set forth above and in the Cudworth Declaration, the District respectfully requests that the Court (a) enter the Order, substantially in the form attached hereto as Exhibit A, granting the relief requested by this Motion and (b) grant such other and further relief as the Court may deem just and proper.

DATED this 30th day of June, 2017.

FOSTER PEPPER PLLC

By: /s/ Jack Cullen

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